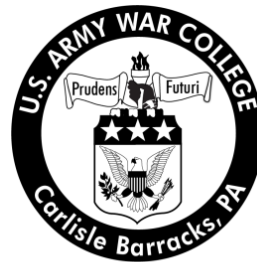


Strategy Research Project

The U.S. Government's Employment of Private Security Companies Abroad

by

Colonel Eugene Shearer
United States Army



United States Army War College
Class of 2012

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USAWC STRATEGY RESEARCH PROJECT

**THE U.S. GOVERNMENT'S EMPLOYMENT OF PRIVATE SECURITY COMPANIES
ABROAD**

by

Colonel Eugene Shearer
United States Army

Colonel Richard A. Lacquement Jr., Ph.D.
Project Adviser

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U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

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The recent conflicts in Afghanistan and Iraq have facilitated a 206% increase in the U.S. use of Private Security Companies (PSCs), with the number growing to more than 28,000 personnel as of March 31, 2011.¹ These increases have fueled the PSCs industry worldwide, and present significant challenges for management and oversight.² Although U.S. Policy must address these challenges, PSCs will likely remain a part of our operational environment abroad. U.S. Policy makers should consider PSCs use as a viable option for defensive security missions under certain conditions. U.S. policy must continue to support international efforts to establish recognized industry standards in order to improve PSCs regulation and oversight in future operations.

THE U.S. GOVERNMENT'S EMPLOYMENT OF PRIVATE SECURITY COMPANIES ABROAD

This essay explores the background and U.S. policy implications of the increased use of Private Security Companies (PSCs) in the recent conflicts in Afghanistan and Iraq. These increases fueled the private security industry worldwide, and presented significant challenges in management and oversight.³ Although U.S. Policy must address these challenges, PSCs will likely remain a part of our operational environment abroad.

PSCs are a viable option for performing defensive security missions in an economy of force role, or as an economically preferred alternative to conventional forces.⁴ These defensive security missions are defined by U.S. law as static site security, convoy security, security escorts, and personal security details.⁵ Current statute also limits the conditions in which PSCs can operate, restricting them from performing these missions during uncontrolled or high threat periods, such as the initial phases of combat operations.⁶

Definitions

To foster a common understanding of the topics covered in this essay, it is necessary to clarify several definitions of key terms. This paper differentiates between the term mercenary as defined by the United Nations, and the term PSCs as defined by U.S. code.

Mercenary. According to the United Nations International Convention against the recruitment, use, financing and training of mercenaries, adopted on 4 December, 1989, a mercenary is any person that meets the following criteria:

(a) Is specially recruited locally or abroad in order to fight in an armed conflict; (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party; (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (d) Is not a member of the armed forces of a party to the conflict; and (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.⁷

In addition to these elements of the definition, P. W. Singer, in *Corporate Warriors*, adds the further distinction that mercenaries focus on combat services due to their lack of prior organization and collective training.⁸ This implies that a mercenary is generally employed individually as opposed to belonging to a group or organization with defined Standing Operating Procedures (SOPs), individual and collective training, and organizational vetting designed to regulate the quality of the individuals employed.

Private Security Companies (PSCs). The National Defense Authorization Act for 2008 defines Private Security Company functions as “the guarding of personnel, facilities, or property and any other activity for which contractors are required to be armed.”⁹ The Congressional Research Service goes on to state that the current U.S. statutory definition does not include such services as operational coordination, intelligence analysis, hostage negotiations, and security training. They further break down the PSCs services into the categories of static site security, convoy security, security escorts, and personal security details.¹⁰ This U.S. law restricts PSCs to missions that are defensive in nature.

This definition is narrower than that proffered by one of the most referenced works on the subject of private security. In Deborah Avant’s, *The Market for Force*, she defines three types of firms: firms that provide the services defined in the

aforementioned U.S. law, firms that provide advice and training, and firms that provide military support.¹¹ For the purpose of this paper, we will reference the definition outlined in the National Defense Authorization Act for 2008.

The significant differences between a mercenary and PSCs as defined above are that the mercenary is recruited to participate in armed conflict and is neither a national of a party to the conflict or a resident of the territory controlled by a party involved in it. Mercenaries also lack collective organization and collective training and therefore specialize in actual combat. On the contrary, PSCs personnel are often recruited from populations whose governments are participants in the conflict. To emphasize the recruitment differences between mercenary and the PSCs employees, many PSCs personnel have been recruited and employed from countries that are members of the coalition, NATO, Iraq, and Afghanistan during the recent conflicts. The PSCs are also required to conduct specific individual and collective training for their guards who are part of a formal collective organization with defined policies and procedures.

Rise of the Private Security Company

The histories of the mercenaries and PSCs are intertwined, making it difficult to pinpoint the birth of PSCs. As defined earlier, the missions of PSCs are defensive in nature, and are limited to static site security, convoy security, security escorts, and personal security details. It is not until the 20th Century that we see a relatively clear distinction that limits PSCs to these defensive missions.

In the 20th Century there were two prevailing trends with private security and the employment of security forces. The state system became dominant and the use of state employed mercenaries as part of states' war-fighting armies declined dramatically. This decline is at least partially due to the efforts of the international community to control the

use of mercenaries. These efforts include the Additional Protocol I and II to Article 47 of the Geneva Convention (1949), the Organization of African Unity (OAU) Convention for the Elimination of Mercenaries in Africa (1972), and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989)¹².

Decolonization after World War II and the subsequent destabilizing effects it created, provided another opportunity for private security employment. Business interests operating in these decolonized regions required security much like the Dutch and English East Indian Companies.¹³ With the advent of globalization in the late 20th and early 21st centuries, corporations continued to venture forth into parts of the world that required PSCs to protect against threats to their personnel.¹⁴

After the attacks on the U.S. homeland on September 11, 2001, the U.S. responded with what came to be known as the Global War on Terror (GWOT). On October 7, 2001, the U.S. began Operation Enduring Freedom (OEF) in Afghanistan; this marked the beginning of rapid growth of U.S. PSCs use. Operations in Afghanistan were from the onset heavily dependent on alternative means to offset the relatively small number of U.S. Soldiers employed on the ground. The U.S. relied on surrogate forces, such as the Northern Alliance to augment the relatively small number of U.S. troops on the ground.¹⁵ This method of warfare enabled PSCs to begin to provide security services to the U.S. as an extension of this 'do more with less' strategy. In March 2003, with the invasion of Iraq and the start of Operation Iraqi Freedom (OIF) U.S. strategy deemphasized operations in Afghanistan.¹⁶ As the insurgency in Iraq grew, it drove a change in strategy and a subsequent surge of forces. The implementation of the troop intensive counter-insurgency strategy required a greater

dispersion of the military forces among the population, an increase in civilian and non-governmental agencies to foster Iraqi development, and an increased role of the State Department for the further development of Iraqi governance. With this increased security requirement, PSCs began to perform in an economy of force role, allowing U.S. Military personnel to be employed in more combat oriented missions.¹⁷

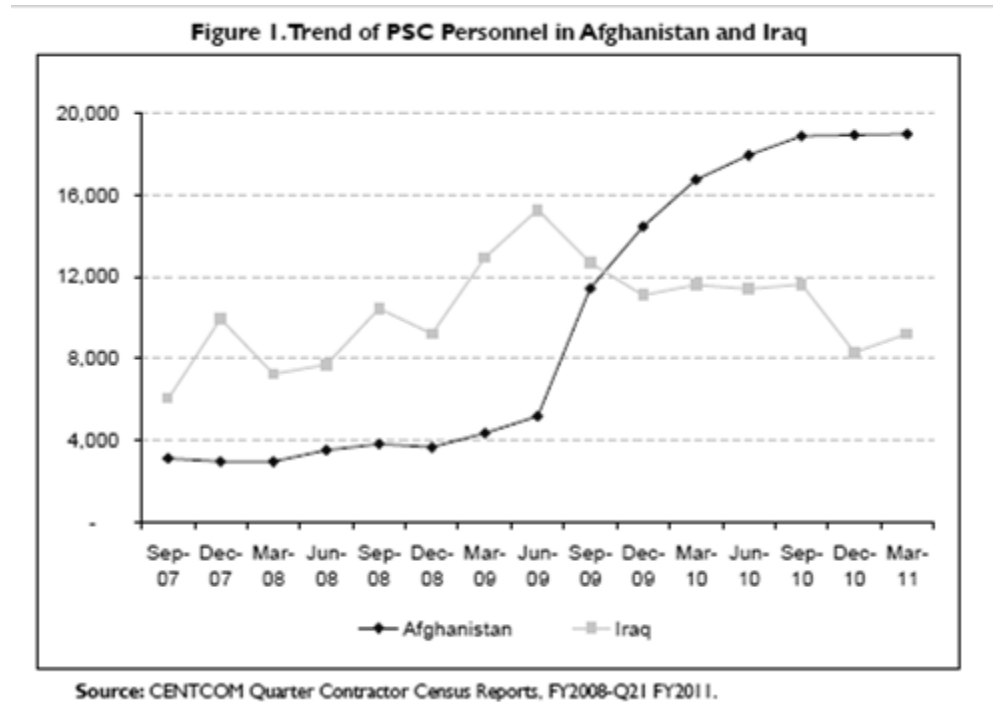


Figure 1:

Figure 1 above graphs the PSCs personnel numbers in Afghanistan and Iraq from September 2007 to March 2011. Central Command (CENTCOM) did not track these numbers prior to September 2007.¹⁸ As of March 31, 2011, there were more than 28,000 private security contractors in Afghanistan and Iraq with the former's numbers exceeding the latter's as of December 2009. PSCs represented 18% of all contractors supporting the Department of Defense's operations in both theaters.¹⁹ As supported by

Figure 1 above, the number of PSCs personnel in Afghanistan and Iraq increased by 502% and 52% respectively from September 2007 to March 2011.²⁰ James Cockayne in his book *Beyond Market Forces: Regulating the Global Security Industry* explains this dramatic increase as follows:

The global security industry has undergone particularly dramatic growth following the US-led military campaigns in Iraq and Afghanistan. There are a number of reasons for this growth: the demobilization of former Cold War troops; the availability of globalized transport, information management, and marketing technologies facilitating the global organization and projection of military power and security services; the popularity of the privatization of government services in Western Democracies; and the export of that Washington consensus model of small government to developing countries through bilateral and multilateral overseas development assistance.²¹

With the increasingly large number of security forces being employed by the U.S. and other coalition forces abroad, problems arose in the areas of regulation and oversight.

Regulation and Oversight

U.S. Forces have taken many steps to regulate and manage the contracting of private security in Afghanistan. In June 2010, the International Security and Assistance Force (ISAF) established a new Task Force to investigate the effects of contracting on the overall counter-insurgency mission. Rear Admiral Kathleen Dussault, as commander of the newly formed Task Force 2010, was charged with fostering a better understanding of the impact of contracting and where the billions of dollars and Euros were going. After General David H. Petraeus took command of the forces in Afghanistan on July 5, 2010, he published specific guidance to his subordinate commanders on use of coalition contracting in the counter-insurgency fight. The guidance was issued on September 8, 2010, and outlined the deleterious effects that irresponsible contracting could have on the coalition mission:

With proper oversight, contracting can spur economic development . . . If however we spend large quantities of international contracting funds quickly and with insufficient oversight it is likely that some of those funds will unintentionally fuel corruption, finance insurgent organizations, strengthen criminal patronage networks, and undermine our efforts . . . if we contract with powerbrokers who exclude those outside their narrow patronage networks . . . the effect on Afghan perceptions and our mission will be negative.²²

GEN Petraeus intended to increase the focus on how the hundreds of millions of dollars and Euros spent on ISAF contracts were affecting the overall war effort in Afghanistan. As previously stated, a significant portion of these funds were paying for PSCs. Figure 2 below illustrates the top 10 contingency contracting services in Iraq and Afghanistan for FY2002 to FY2011; as indicated, “Guard Services” amount to \$3.8 billion and rank 5th of all expenditure categories.²³

Table 3. Top 10 services acquired through contingency contracts
Performed in support of operations in Iraq and Afghanistan, FY 2002 through mid-FY 2011

Service description	Total (in billions)
Logistics support services	\$46.5
Construction of miscellaneous buildings	10.5
Technical assistance	5.5
Other professional services	5.2
Guard services	3.8
Maintenance and repair, alterations of office buildings	3.5
Construction of office buildings	2.9
Lease-rent or restoration of real property	2.8
Facilities operations support services	2.5
Program management/support services	2.4
Total obligations for top 10 services	\$85.6
Top 10 as percentage of total services obligations	44 %

Source: FPDS-NG and USASpending.gov, last updated on June 12, 2011 for FY 2002 through the end of the second quarter of FY 2011. Includes contracts performed in Iraq, Afghanistan, Bahrain, Kuwait, Qatar, Pakistan, Kyrgyzstan, Kazakhstan, Turkmenistan, Tajikistan, and Uzbekistan. Includes grants performed in Iraq and Afghanistan only.

Figure 2:

Although ISAF attempted to improve oversight of coalition contracting to include PSCs, the results of a recently declassified congressional inquiry into PSCs operating in

Afghanistan, brought to light just how corrupt and nefarious the PSCs situation in Afghanistan had become. The report dated September 28, 2010, highlighted “PSCs funneling U.S. tax dollars to Afghan warlords and strongmen linked to murder, kidnapping, bribery as well as Taliban and other anti-coalition activities.”²⁴ The report goes on to identify poor contractor performance, the lack of adequate training, poor weapons serviceability and maintenance, and other shortcomings that they determined put U.S. personnel at risk. The report outlined twelve relevant findings:

(1) The proliferation of private security personnel in Afghanistan is inconsistent with the counterinsurgency strategy. (2) Afghan warlords and strongmen operating as force providers to private security contractors have acted against U.S. and Afghan interests. (3) U.S. government contracts for private security services are undermining the Afghan government’s ability to retain members of the Afghan National Security Forces by recruiting men with Afghan National Army and Afghan National Police experience and by offering higher pay. (4) Failures to adequately vet, train, and supervise armed security guards have been widespread among DOD’s private security contractors, posing grave risks to U.S. and coalition troops and to Afghan civilians. (5) Private Security contractors operating under DOD contracts have failed to adequately vet their armed personnel. (6) Private Security contractors working under DOD contracts in Afghanistan regularly failed to satisfy DOD requirements, including completing essential training requirements for their personnel. (7) There have been dangerous deficiencies in the performance of DOD private security contractors in Afghanistan. (8) The DOD contracted with companies in Afghanistan that appear to have had no prior experience providing security services. (9) There have been significant gaps in U.S. government oversight of private security contractors in Afghanistan. (10) The DOD has failed to address serious deficiencies identified in the performance of private security contractors in Afghanistan. (11) The DOD has little insight into the operations of private security providers hired as subcontractors by DOD prime contractors. (12) The DOD has failed to enforce its policies relating to private security contractors’ accountability for the personnel.²⁵

Unfortunately, several of this report’s findings would manifest themselves in an incident that occurred on March 19, 2011 that cost the lives of two U.S. service members and injured four others.²⁶ In this incident, a PSCs guard employed by Toronto-

based Tundra Strategies, a company contracted to secure multiple Forward Operating Bases (FOBs) in the vicinity of Kandahar Air Base (KAF) in Southern Afghanistan was determined to be the perpetrator.²⁷ On that March day, Shir Ahmed opened fire on U.S. Soldiers at FOB Frontenac, killing two and wounding four others before he was shot by those responding to the attack. The investigation determined that Ahmed had been fired the previous year by Tundra for threatening ISAF soldiers at a FOB further south in the Kandahar Province; he was then rehired a year later approximately thirty days prior to the incident²⁸.

The history of U.S. PSCs use in Iraq provides additional examples of problems with regulation and oversight. Shortly after the successful U.S. led coalition invasion of Iraq in March 2003, it became evident that the coalition had underestimated the security requirements in the post conflict phases of the operation. The bombing of the United Nations complex at the Canal Hotel in Baghdad on August 19, 2003, further demonstrated that the security situation in Iraq had deteriorated, and that a security gap had widened, not only for the military personnel, but for civilian and non-governmental organizations. As the summer of 2003 burned on, the complexity of the environment coupled with the growing security gap resulted in an increase in U.S. use of PSCs²⁹. With the coalition military, U.S. Government agencies, international organizations, contractors, non-governmental organizations, and the local population all sharing the same battle space, the coalition military was entirely incapable of providing security for all, given the number of troops on the ground and the growing insurgency.³⁰

As the use of PSCs increased, it became evident that their capabilities, although often impressive, began to blur the lines between military and civilian organizations. In

his Strategic Research Paper, *Phasing Out Private Security Contractors in Iraq*, COL Bobby Towery illustrates this very problem.

In many ways it was a textbook example of urban warfare. In April a group of well-armed Shia militia in the Iraqi city of Najaf attempted to storm the local Coalition Provisional Authority offices. The badly outnumbered defenders repulsed the attack during a 23-hour firefight, shooting off thousands of rounds of ammunition. When bullets ran low, they called in helicopters to drop off fresh supplies and ferry out the wounded. But in a critical way the battle in Najaf represents the new face of modern warfare: Most of the defenders were not soldiers but civilian contractors—employees of Blackwater USA, a private security firm based in North Carolina. The guns, the ammo, and even the choppers all belonged to Blackwater.³¹

During the height of the insurgency in Iraq, an incident occurred that highlighted the lack of control and oversight of PSCs operating in virtually every part of the country by this time. On July 14, 2005, two Iraqi civilians claimed they were shot by a PSCs convoy in the city of Irbil. The investigation later found the accused PSCs to be innocent although the two civilians held to their accusations.³²

When interviewed about the incident, BG Karl R. Horst, then a Deputy Commanding General for the 3rd Infantry Division responsible for the greater Baghdad area, stated the following:

These guys run loose in the country and do stupid stuff. There is no authority over them, so you can't come down on them hard when they escalate force. . . They shoot people, and someone else has to deal with the aftermath. It happens all over the place.³³

Due to the frequency of the shootings by civilian contractors in the Baghdad area, BG Horst began to keep an independent count of the incidents in his daily log recording that between May and July of 2005, he tracked at least a dozen incidents.³⁴

PSCs have a long record of using potentially deadly force in Iraq. A recent freedom of information act request of the U.S. State Department's Bureau of Diplomatic

Security yielded 200 reports of PSCs personnel discharging their weapons between 2005 and 2007.³⁵ The Office of the Special Inspector General for Iraq Reconstruction (SIGR) cited 109 incidents of weapons discharges by PSCs from May 2008 to February 2009. These incidents included reported responses to attacks and negligent discharges.³⁶

Military personnel withdrew from Iraq in December 2011, leaving the U.S. State Department and its 15,000 employees with a significant security shortfall. To fill the void, State hired approximately 5,000 PSCs personnel from at least three major companies: Triple Canopy, Global Security Strategies, and DynCorp International. These groups will provide all of the defensive functions previously defined in this document to include the employment of Armed Helicopter escorts.³⁷

There are many questions as to how the State Department will employ and manage what amounts to approximately a U.S. Army Brigade Combat Team with direct support aviation. “This isn’t what the State Department does for a living. This isn’t a part of their culture. They are being thrown into something that they have never managed before” stated Dov Zakheim, former Pentagon official and member of the U.S. Congress’ Commission on Wartime Contracting.³⁸ Although questions as to the effectiveness and management of this large PSCs force in Iraq remain unanswered at this point in time, this could become common practice in locations where U.S. military personnel cannot operate.

Soldiers, State Department Personnel, or PSCs? A Cost Comparison

Any cost comparison between the use of soldiers and PSCs must begin with the tasks to be performed and an analysis of the capability differences between the two groups. The PSCs missions, as defined by U.S. Law, are defensive in nature and are

described as static site security, convoy security, security escorts, and personal security details³⁹. PSCs personnel are trained and resourced to perform these tasks, and forbidden from performing offensive tasks.⁴⁰

Soldiers, on the other hand, are trained and capable of both defensive and offensive operations. All cooks, clerks, administrative personnel, truck drivers, mechanics, etc., receive a rudimentary level of combat skills training, to include both offensive and defensive skills. The combat arms soldier (infantry, armor, special forces, etc.) receives more advanced training in their specific area of warfare. All U.S. Soldiers, regardless of their MOS, are trained to conduct both offensive and defensive operations at the rudimentary level, with the combat arms soldier able to perform at a more advanced level. The comparison of PSCs and soldiers performing the specified PSCs defensive missions reveals that the soldier holds the qualitative advantage.

Intangibles such as differences in the level of unit pride, cohesion, and esprit de corps must also be considered. A unit of soldiers deployed in support of a contingency operation, shares a commonality in training, the knowledge and understanding of a core value system⁴¹, the Army Warrior Ethos⁴², unit training and preparation at their home station, and “muscle memory” in performing as a team. The PSCs personnel go through a standard regimen of required training prior to taking their posts and performing their mission, but the differences in the quality, quantity, and duration of the training represent a marked advantage for the U.S. Soldier.

In 2007, the Congressional Budgeting Office (CBO) published an analysis of contractor support in Iraq covering the 2003 to 2007 time period. The report, entitled “Contractors’ Support of U.S. Operations in Iraq” covered many aspects of this topic to

include a cost comparison of U.S. Army Soldiers and PSCs contractors performing a security mission in Iraq. This section starts with a criticism of another cost comparison conducted previously by Joseph Stiglitz and Linda Blime's in which they made the following assertion:

In 2007, private security guards working for companies such as Blackwater and DynCorp were earning up to \$1,222 a day; this amounts to \$445,000 a year. By contrast, an Army sergeant was earning \$140 to \$190 a day in pay and benefits, a total cost of \$51,100 to \$63,350 a year⁴³

The CBO argued that both daily rates did not accurately reflect a true means of comparison. The contractor daily rate contained additional elements like overhead and profit that the base pay rate for the soldier did not include, and thus inflated the cost of the contractor in the Stiglitz-Blime model. In this model it was also acknowledged that the base pay and benefits for the sergeant did not reflect all of the overhead costs to the U.S. Government for the sergeant performing the deployed security mission. The CBO established a billing rate for one soldier performing a deployed security mission for a year that better reflected the overall cost to the government and that could be more accurately compared to the daily billing rate of the PSCs for one guard.⁴⁴

The cost analysis included three types of costs: personnel costs, operating costs, and equipment costs. In the personnel costs, the CBO attempted to quantify and include benefits above and beyond the base pay like health care and special pays for soldiers deployed. This ended up roughly doubling the amount from the Stiglitz-Blime model and was determined to be a more accurate cost aggregation for the cost of a deployed U.S. Soldier.

The CBO also attempted to account for the desired and actual dwell to deployment ratios in the Army Force Generation Model (ARFORGEN) based on the

Congressional testimony of General Richard Cody, then Vice Chief of Staff of the Army. The CBO model accounted for the desired ratio of 2:1 units at home station to units deployed, but acknowledged the less desirable actual ratio at the time of the study of about 1.2:1. Figure 3 illustrates a cost comparison of both the actual troop ratios at the time of the study in Case 1, and the desired troop ratio in Case 2.⁴⁵

Type of Cost	Cost of Army Infantry Units (Millions of 2008 dollars)					Blackwater's Costs (Millions of 2008 dollars)
	Deployed Units	Case 1—1.2 Units in Rotation Base Rotational Units	Total Cost	Case 2—2.0 Units in Rotation Base Rotational Units	Total Cost	
Military Personnel	21.8	24.9	46.6	41.5	63.2	
Operations	33.2	7.4	40.6	12.4	45.6	
Equipment	0.4	0.5	0.9	0.8	1.2	
Total Costs	55.4	32.8	88.2	54.6	110.1	98.5

Source: Congressional Budget Office based on Blackwater's invoice for contract S-AQMPD-04-D-0061.

Figure 3:

These costs when compared with the Blackwater costs on the far right yield a similar result as the Stiglitz-Blime model, although the delta is much less: the infantry unit would be cheaper than the Blackwater contract with approximately \$10.3 million per year savings. When we look at the next set of numbers that reflect the U.S. Army desired ration of two units at home for every one deployed then combined with the cost of the deployed force, we find that Army force costs actually exceed the Blackwater costs by \$11.6 million per year. The total Blackwater cost falls about in the middle of the two model cases so we can therefore roughly estimated the breakeven point to be approximately 1.6 units at home for every one unit deployed.

Given the current geopolitical environment with no U.S. service members in Iraq as of December 2011, the PSCs are and will continue to be the option of last resort for static site security, convoy security, security escorts, and personal security details. This

also frees up additional troops, thus increasing the ratio of soldiers at home to those deployed, making the PSCs a more economical option in other parts of the world and Afghanistan. The use of PSCs performing these functions for the U.S. Embassy in Iraq is currently the only option due to the lack of a Status of Forces Agreement (SOFA). If similar SOFA impasses occur in Afghanistan as the U.S. draws down the number of U.S. service members, the PSCs could become the option of last resort for the security functions described above.

In March 2010, the U.S. State Department conducted a cost comparison of using PSCs or State Department personnel, in the form of Diplomatic Security Special Agents, to secure personnel and facilities in Iraq.⁴⁶ The State Department compared base year obligated amounts for four task orders and one security contract as illustrated in Figure 4 below.⁴⁷

Table 1: State Department versus Private Security Contractor Cost Comparison (\$ in millions)

Contract / task orders	Number of contractor personnel	Contractor ^a annual cost	State Department annual estimated cost ^b (in fiscal year 2008 dollars)			Cost difference
			Deployed	Stateside	Total	
Baghdad Embassy Static Security	1,982	\$77.6	\$681.9	\$176.5	\$858.4	(\$785.1)
Baghdad Region Personal Protective Services Task Order	553	\$380.4	\$190.3	\$49.2	\$239.5	\$140.9
Basrah Region Personal Protective Services Task Order	243	\$61.6	\$83.6	\$21.6	\$105.2	(\$43.7)
Al-Hillah Region Personal Protective Services Task Order	259	\$71.9	\$89.1	\$23.1	\$112.2	(\$40.3)
Erbil Region Personal Protective Services Task Order	128	\$52.1	\$44.0	\$11.4	\$55.4	(\$3.3)

Source: GAO analysis of State Department data.

^aThe contractor annual costs have been converted into fiscal year 2008 dollars.

^bThe costs to recruit, hire, and train new employees are not included because the State Department would incur costs to acquire new employees before it would incur the additional estimated annual costs in this table.

Figure 4:

The State Department concluded that the forecasted costs for hiring State Department personnel exceeded the PSCs costs in four of the five cases analyzed. This analysis took into account the fact that the State Department did not have enough employees to meet the requirement, and would incur \$162 million in costs just to recruit and train the work force to perform these tasks. In the case of providing personal protective services in the Baghdad region, the PSCs costs exceeded the State Department estimated costs due to the requirement for the personnel to have security clearances.⁴⁸

Based on the conditions described in the two examples listed above, PSCs are a cost effective alternative to the use of U.S. Soldiers or State Department personnel. In the CBO example, PSCs cost less when the ARFORGEN ratios of two units at home for every one deployed are met. In the State Department example, PSCs employment allowed the customer to avoid training costs associated with rapid expansion.

Industry Standards, Oversight, and Legal Jurisdiction

Incidents outlined thus far are evidence of the lack of PSCs regulation, oversight, and internationally accepted industry standards. In his book, *Beyond Market Forces*, James Cockayne states the following with regards to the establishment of a regulatory framework:

Any effective standards implementation and enforcement framework will need to be based on the fundamental state legal duty to protect human rights, the corporate responsibility to respect these rights, and the shared obligation to provide access to a remedy in the case of violations. While no single stakeholder group is in a position to provide credible, effective standards implementation and enforcement for the industry on its own, each stakeholder group – states, industry, the industry’s clients, and civil society groups – brings something to the table. Together or separately, they may need to develop different components of a larger framework that, over time, fosters convergence toward effective implementation and enforcement of shared standards.⁴⁹

He goes on to define five possible frameworks that could be applied for regulating PSCs: (1) the watchdog, (2) the accreditation regime, (3) the court or arbitral tribunal, (4) the harmonization scheme, and (5) the club.

Cockayne goes on to further describe these elements. An industry watchdog's mission would be to monitor PSCs compliance with a global industry standard, referring violations to a state or international authority for action.⁵⁰ An accreditation regime could deliberately harness market based incentives to create or enhance demand for PSCs that are in compliance with established standards. This regime would focus on three critical functions: certification, auditing, and company ratings.⁵¹ An industry arbitral tribunal would focus on PSCs issues such as labor, contractual and other disputes, short of serious violations of international law.⁵² A PSCs harmonization scheme would encourage mutually supporting national laws among states where PSCs operate in accordance with internationally accepted standards.⁵³ The club would provide a framework for PSCs, their clients, and states to foster a shared professional culture and ethics. The basis for the club would be a universally accepted set of industry standards.⁵⁴ In accordance with the Cockayne model described above, the Swiss Government is currently attempting to establish such a regulatory framework.

The Swiss Government and the International Committee of the Red Cross (ICRC) initiated work on what became known as the Montreux Document in 2006. This document attempted to describe how international law applied to PSCs in the context of armed conflict.⁵⁵ The document was released on September 17, 2008, with 17 nations signing on to support it (Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, The United

Kingdom, Ukraine, and the United States of America). Although an official document of the United Nations, this document was not legally binding and established no new law, but attempted to harmonize international interpretations of existing laws pertaining to the PSCs.⁵⁶

In March 2009, the Swiss Government mandated the Privatization of Security Program at the Geneva Center for the Democratic Control of Armed Forces (DCAF) to facilitate the development of an International Code of Conduct (ICoC) for Private Security Providers. This document incorporates the five frameworks Cockayne outlines above into an international regulating entity. The ICoC brings together three major stakeholders: signatory companies, governments, and civil society, in an attempt to establish an international industry standard. The code is based on current international humanitarian and human rights laws, and was completed in November 2010, when the initial 58 PSCs signed the document. These PSCs publically affirmed their responsibility to uphold human rights, fulfill humanitarian responsibilities, and operate in accordance with the ICoC.⁵⁷ As of December 1, 2011, the PSCs count was up to 266 from a total of 47 countries.⁵⁸

Section 11 of the ICoC authorized the establishment of a Temporary Steering Committee (TSC) whose primary function was to draft a charter to establish the ICoC oversight mechanism. The TSC is comprised of four representatives from the PSCs industry, four representatives from civil society, and three representatives from interested governments. The government representatives include Josh Dorosin, of the U.S. Department of State.⁵⁹ The TSC began work on the ICoC Charter in January 2011, and published the coordinating draft on January 16, 2012.⁶⁰ All PSCs, interested

members of civil society, and governments will have sixty days to provide input to the TSC for revisions. From March 16 to May 16, the TSC will deliberate and rework the charter as required. May 16, 2012, is the target date for adoption of the ICoC Charter.⁶¹

According to the cover letter of the draft ICoC Charter signed by Claude Wild, Head of Political Affairs Division IV – Human Security, for the Swiss Government, the draft charter accounts for the following:

. . . the Oversight Mechanisms structure and governance, PSC certification and membership criteria, procedures for performance assessment and review, auditing and monitoring in the field, and effective mechanisms for addressing third party complaints alleging violations of the Code.⁶²

The draft charter addresses all of the major components of a regulatory framework as described by Cockayne, although it does not directly address the market based incentives that he describes in the accreditation regime. However, the elements of certification, auditing, and rating, are likely to lead to the preferential hiring of PSCs that comply with the code. COL (Ret) Christopher M. Mayer, in his online article “What the ICoC is Not” states the following:

In many states (the United States among them) enforcement of national law is hindered by the lack of measurable standards by which a company’s actions can be judged. Clients may now incorporate industry standards derived from the ICoC into contracts, enabling the use of contract law, other tort law and applicable criminal law to enforce those standards in court . . . Some countries are already looking at making endorsement of the ICoC a prerequisite for licensing.⁶³

Only time will tell if the process stated by the Swiss Government and the ICRC in 2006 will result in an international regulating mechanism for PSCs, although there are indications that the industry is supportive of these efforts.

All five of the PSCs discussed in this paper have signed on to the ICoC to include the two companies that are portrayed negatively: Tundra Strategies and Blackwater.

Blackwater changed its name to *Xe Services* nearly three years ago in an attempt to distance itself from its dubious past in Iraq, and recently changed its name again to *Academi*.⁶⁴ Xe Services is actually the company that has signed on to the ICoC. The three companies that are currently providing PSCs services to the U.S. Embassy in Iraq, Triple Canopy, Global Security Strategies or Global Strategies Group, and DynCorp International, have also signed on to the current ICoC. It is too early to tell if the ICoC will remedy industries history of human rights violations and industry inconsistencies. Holding PSCs personnel legally accountable for their actions is an additional challenge.

U.S. PSCs operating abroad fall under three levels of legal authority: (1) the international order of the laws and usages of war; (2) U.S. law; and (3) the domestic law of the host country.⁶⁵ Non-U.S. PSCs are obviously not subject to U.S law in item (2) above, but are bound by the laws of their home countries. We will now explore each of these three bodies of law.

The international law relating to PSCs is commonly known as international law of armed conflict of humanitarian law. The question of how these laws categorize PSCs contractors is most relevant to our analysis. Because contract employees are not in the military chain of command, PSCs personnel are not considered to be combatants and do not enjoy the benefit of being treated as Prisoners of War (POWs) if captured by an enemy force.⁶⁶ The Montreux Document discussed early in this essay attempts to describe how international law applied to PSCs in the context of armed conflict.⁶⁷ Although it is an official document of the United Nations, the Montreux Document is not

legally binding and establishes no new law; it is however, an attempt to harmonize international interpretations of existing laws pertaining to the PSCs.⁶⁸

There are several major elements of U.S. law relevant to our analysis: the Federal Activities Inventory Reform (FAIR); the Federal Acquisition Regulation (FAR) and the subsequent DOD implementation instructions titled the Defense Acquisition Regulation Supplement (DFARS); the Military Extraterritorial Jurisdiction Act (MEJA); the Uniform Code of Military Justice (UCMJ); and the Special Maritime and Territorial Jurisdiction Act.⁶⁹ The FAIR Act of 1998 defines function that are inherently governmental that should only be performed by public officials.⁷⁰ There are currently two interpretations of functions that are “inherently governmental”:

One is a statutory definition, enacted as part of the Federal Activities Inventory Reform (FAIR) Act of 1998. This definition states that an inherently governmental function is “a function so intimately related to the public interest as to require performance by Federal Government employees.” The other is a policy-oriented definition contained in OMB Circular A-76. This definition states that an inherently governmental activity is “an activity that is so intimately related to the public interest as to mandate performance by government personnel.”⁷¹

The debate over this definition, and if the defensive PSCs operations should be considered “inherently governmental” continues.⁷² Congress has on occasion further clarified “inherently governmental” functions and did so with reference to the PSCs industry in the FY2009 National Defense Authorization Act (NDAA). In this law, congress further limited the use of PSCs stated that they should not perform certain functions such as the protection of resources in high-threat operational environments and directed DOD to ensure that PSCs are not authorized to perform inherently governmental functions in a combat zone.⁷³ The interpretation of this definition directly

affects the more technical laws governing the specific contracting aspects of PSCs usage.

The FAR and the DOD implementation instructions found in the DFARS restrict PSCs personnel as follows: PSCs “who are authorized to use deadly force “only when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract.”⁷⁴ The FAR and DFARS limit the actions of PSCs use of deadly force and restrict them from performing offensive operations. These regulations are focused on the contractual aspects of hiring, managing, and if necessary, firing PSCs and do not provide for the prosecution of PSCs personnel for illegal acts. The MEJA, the UCMJ, and the Special Maritime and Territorial Jurisdiction Act, provide for the prosecution of PSCs personnel that perform illegal acts abroad under specific conditions.⁷⁵

The MEJA of 2000, extends certain U.S. statutes to U.S. nationals “employed by or accompanying the armed forces” and could be used to prosecute PSCs employees that commit felonies while working abroad.⁷⁶ Under the provisions of this act, this jurisdiction extends to DOD civilians as well as civilians contracting with the DOD at any level to include subcontractors.⁷⁷ MEJA does not expressly cover non-DOD contractors and therefore would not apply to PSCs contracted for the State Department or other governmental and nongovernmental organizations.⁷⁸ The department of justice reported that from 2000 to April 2008, a total of 12 cases were charged in U.S. federal court resulting in only seven convictions under the MEJA jurisdiction. They attributed this relatively low number of cases to the difficulties associated with conducting

investigations during combat operations which include language, evidence collection, logistics support, and coordination with the host nation.⁷⁹

The John Warner National Defense Authorization Act for Fiscal Year 2007 expanded the jurisdiction of the UCMJ to include “persons serving with or accompanying an armed force in the field”, during “time of declared war or a contingency operation.”⁸⁰ To date, only one contractor has been charged and prosecuted under the UCMJ, although several have been detained but released before proceedings were conducted.⁸¹ The use of the UCMJ to charge and prosecute crimes committed by PSCs personnel remains controversial and would most likely be challenged on constitutional grounds.⁸² The current controversial expansion of UCMJ jurisdiction to contractors operating with the military does not provide for those contractors serving with the other governmental and nongovernmental entities; the Special Maritime and Territorial Act provides an option for these.

The Special Maritime and Territorial Act holds jurisdiction over U.S. Nationals in the following areas:

(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and (B) residents in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.⁸³

This act also goes on to specify that U.S. personnel that fall within the jurisdictions of MEJA or UCMJ do not fall under this act.⁸⁴ There is one case of precedence involving a CIA contractor that was prosecuted under this act for assaulting a detainee on a

firebase in Afghanistan.⁸⁵ This act provides a jurisdiction for those PSCs working for the non-DOD and nongovernmental agencies that employ security services abroad.

Laws of the host nation where the PSCs operate also affect these companies under normal conditions. Under certain conditions, the United Nations Security Council may mandate another jurisdiction over PSCs and other contractors operating in a specific area. This was the case in Iraq with the Coalition Provisional Authority (CPA).⁸⁶ CPA Order 17, exempted contractors from Iraqi laws; this provision remained in place after the Iraqi Interim Government assumed control until January 1, 2009, when the Iraqi Government assumed primary jurisdiction.⁸⁷

In Afghanistan, there are two separate mandates affecting legal jurisdiction over PSCs: Operation Enduring Freedom (OEF), and the International Security and Assistance Force (ISAF).⁸⁸ The military personnel and contractors operating as part of OEF fall under the Status of Forces Agreement (SOFA) of April 2002 between the U.S. Government and the Islamic Transitional Government of Afghanistan (ITGA).⁸⁹ This agreement exempts U.S. military personnel, civilians, and contractors from Afghan jurisdictions except for acts performed outside their normal duties.⁹⁰

All three of the levels of legal authority-- international, U.S., and host nation, have thus far yielded few PSCs cases charged, and even fewer prosecuted. As previously stated, these relatively low numbers can be attributed to the difficulties associated with conducting investigations during combat operations which include language, evidence collection, logistics support, and coordination with the host nation.⁹¹ These difficulties are further exacerbated when non-U.S. companies and personnel are involved in illegal acts.

Recommendations

U.S. policy makers should continue to advocate the use of PSCs for defensive missions under certain conditions. These defensive security missions are defined by U.S. law as static site security, convoy security, security escorts, and personal security details.⁹² Current statute also limits the conditions in which PSCs can operate, restricting them from performing these missions during uncontrolled or high threat periods, such as the initial phases of combat operations.⁹³

PSCs are a viable option for performing defensive security missions in an economy of force role, or as an economically preferred alternative to conventional forces.⁹⁴ In the economy of force role, PSCs allow U.S. Military personnel to perform more demanding missions, while the defensive security missions are outsourced. Under certain conditions, PSCs are an economically preferred alternative to the use of military or State Department personnel. The 2007 Congressional Budgeting Office's compared PSCs personnel to U.S. military personnel performing the same defensive missions. The comparison found that if ARFORGEN goals are met, providing a ratio of two units at home for every one unit performing a deployed security mission is achieved, it is more cost effective to employ PSCs.⁹⁵ The March 2010, the U.S. State Department cost comparison of employing PSCs or State Department personnel to secure personnel and facilities in Iraq. They concluded that the forecasted costs for hiring State Department personnel exceeded the PSCs costs in four of the five cases analyzed.⁹⁶

U.S. policy must also continue to support and nurture the establishment of an internationally accepted industry standard for PSCs regulation and oversight, and require that all PSCs we employ are signed onto the International Code of Conduct (ICoC) for Private Security Providers. This prerequisite for employment will enable the

use of the industry standards in future contracts, and allowing for greater enforcement of these standards through applicable tort and criminal law.⁹⁷

In conclusion, PSCs will likely remain a part of the Operational Environment of U.S. operations abroad. U.S. Policy should consider their use as a viable option for defensive security missions under the conditions outlined above. Continued U.S. support of the ongoing efforts to establish internationally recognized industry standards is recommended in order to prevent our over reliance on PSCs without an adequate level of regulation and oversight in future operations.

Endnotes

¹ Schwartz, *The Department of Defense's Use of Private Security Contractors*, Summary, 7-9. The author took the total number of PSC personnel as is stated in the document summary. The 206% increase was derived from combining the starting numbers and ending numbers listed on pages 7-9, and deriving the total percentage increase of PSC personnel in Afghanistan and Iraq as 206% from September 2007 to March 2011. In Afghanistan, as of September 2007 there were 3,152 contractors, expanding to 18,971 by March 2011. The result is a 502% increase. In Iraq, as of September 2007 there were 6,062, expanding to 9,207 in March 2011. The result was a 52% increase. When the totals are combined, there were 9,220 as of September 2007, expanding to 28,178 by March 2011; resulting in a total increase of 206%.

² Ibid., 18.

³ Ibid., 18.

⁴ United States Army War College, *Campaign Planning Handbook*, (Carlisle, PA: United States Army War College, 2012) 77. In accordance with the Joint Operations Planning Process (JOPP), Courses of Action must meet the following criteria: they are Adequate (accomplishes the mission within the guidance; meets the end state; objectives; and effects for campaign); they are feasible (can execute within time, space, and resources available); they are acceptable (achieves ends balance with costs/risk).

⁵ Schwartz, *The Department of Defense's Use of Private Security Contractors*, 2.

⁶ *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009*, Public Law 110-417, 110th Cong., 2nd sess. (October 14, 2008) 181, http://www.dod.gov/dodgc/olc/docs/2009NDAA_PL110-417.pdf, (accessed January 29, 2012). "It is the sense of Congress that— (1) security operations for the protection of resources (including people, information, equipment, and supplies) in uncontrolled or unpredictable high-threat environments should ordinarily be performed by members of the Armed Forces if they will be performed in highly hazardous public

areas where the risks are uncertain and could reasonably be expected to require deadly force that is more likely to be initiated by personnel performing such security operations than to occur in self-defense; (2) it should be in the sole discretion of the commander of the relevant combatant command to determine whether or not the performance by a private security contractor under a contract awarded by any Federal agency of a particular activity, a series of activities, or activities in a particular location, within a designated area of combat operations is appropriate and such a determination should not be delegated to any person who is not in the military chain of command.”

⁷ United Nations International Convention against the Recruitment, Use, financing and training of mercenaries conducted on 4 December, 1989, Article, <http://www.un.org/documents/ga/res/44/a44r034.htm>, (accessed December 14, 2011).

⁸ Singer, P.W., *Corporate Warriors* (New York: Cornell University Press, 2003), 43.

⁹ Schwartz, *The Department of Defense's Use of Private Security Contractors*, 2.

¹⁰ Ibid.

¹¹ Avant, Deborah D., *The Market for Force* (United Kingdom: Cambridge University Press, 2005), 16.

¹² Christopher Kinsey, “International Law and the Control of Mercenaries and Private Security Companies”, June 26, 2008, linked from *Cultures and Conflicts Homepage*, <http://conflits.revues.org/index11502.html>, (accessed January 21, 2012).

¹³ Ibid., 31.

¹⁴ Juan Forero, “The Hostage Business: A Special Report; Kidnapping with Money as the Only Object”, June 30, 2001, linked from the *New York Times Homepage*, 1. <http://www.nytimes.com/2001/06/30/world/the-hostage-business-a-special-report-kidnapping-with-money-as-the-only-object.html?pagewanted=all&src=pm>, (accessed December 29, 2011).

¹⁵ MAJ Isaac J. Peltier, *Surrogate Warfare: The Role of U.S. Army Special Forces*, (Fort Leavenworth, KS: School of Advanced Military Studies) Introduction, http://www.jezail.org/03_archive/manuals_monogrms/Surrogate_war_UW.pdf, (accessed December 30, 2011).

¹⁶ Jim Garamone, “Strategic Focus Shifts to Afghanistan, Mullen Says”, May 4, 2009, *U.S. Department of Defense Homepage, Forces Press Service*, <http://www.defense.gov/news/newsarticle.aspx?id=54182>, (accessed January 16, 2012).

¹⁷ Schwartz, *The Department of Defense's Use of Private Security Contractors*, 5.

¹⁸ Ibid., 7.

¹⁹ Ibid., Summary.

²⁰ Ibid., Summary, 7-9.

²¹ Cockayne, James, with Spears Mears, Emily; Cherneva, Iveta; Gurin, Alison; Oviedo, Sheila; and Yeager, Dylan, *Beyond Market Forces: Regulating the Global Security Industry* (New York: International Peace Institute, 2009), 16-17.

²² General David H. Petraeus, "Headquarters International Security Assistance Force, Subject: COMISAF's Counterinsurgency Contracting Guidance", September 8, 2010, <http://www.isaf.nato.int/images/stories/File/100908-NUI-COMISAF%20COIN%20GUIDANCE.pdf>, (accessed December 27, 2011).

²³ Commission on Wartime Contracting in Iraq and Afghanistan, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (Washington D.C.: Commission on Wartime Contracting in Iraq and Afghanistan, August 2011) 23. http://www.whs.mil/library/Reports/CWC_FinalReport-lowres.pdf, (accessed February 9, 2012).

²⁴ U.S. Senate Committee on Armed Services, *Inquiry into the Role and Oversight of Private Security Contractors in Afghanistan, Report and Additional Views*, 111th Cong., 2nd sess., September 28, 2010, Executive Summary. http://www.humansecuritygateway.com/documents/USSCAS_InquiryIntoRoleAndOversightOfPrivateSecurityContractorsInAfghanistan.pdf, (accessed December 27, 2011).

²⁵ Ibid., ix-xi.

²⁶ Jim holt, "Army Investigation not handed over to Armed Services Committee Chair for 8 months", December 19, 2011, linked from *The Santa Clarita Valley Signal Homepage*, <http://www.the-signal.com/m/section/36/article/56624/>, (accessed December 28, 2011).

²⁷ Author's Personal Experience, Served as the Director of Sustainment/ CJ4 for Regional Command South, Afghanistan from November 2010 to June 2011.

²⁸ Jim holt, "Army Investigation not handed over to Armed Services Committee Chair".

²⁹ Schwartz, *The Department of Defense's Use of Private Security Contractors*, 7. Although CENTCOM did not track PSC numbers prior to 2007, it is safe to assume that prior to the 2003 invasion, the U.S. Government employed no PSCs in Iraq. This baseline with the starting number of 0 and the first documented number of 6,068 recorded in September 2007 represent a 6,068% increase.

³⁰ Colonel Bobby A. Towery, *Phasing out Private Security Contractors in Iraq*, Strategy Research Project, (Carlisle, PA: U.S. Army War College, March 14, 2006), 3.

³¹ *Private Military Companies (Firms) Home Page* http://globalguerrillas.typepad.com/pmc/2004/04/pmcs_in_iraq.html, (accessed December 28, 2011).

³² Jonathan Finer, "Security Contractor in Iraq Under Scrutiny After Shootings", September 10, 2005, for The Washington Post, 1. http://people.virginia.edu/~jrw3k/mediamatters/readings/Washington.Post_Security.Contractors.in.Iraq.Under.Scrutiny.After.Shootings_Jonathan.Finer-Sept.10.2005.pdf, (accessed December 29, 2011).

³³ Towery, *Phasing out Private Security Contractors in Iraq*, 6.

³⁴ Ibid.

³⁵ “Security Firms Involved in 200 Shootings in Iraq”, December 14, 2011, The Independent, <http://www.independent.co.uk/news/world/middle-east/security-firms-involved-in-200-shootings-in-iraq-6276688.html>, (accessed February 2, 2012).

³⁶ Stuart W. Bowman, *Investigation and Remediation Records Concerning Incidents of Weapons Discharges by Private Security Contractors Can Be Improved* (Washington, D.C.: Office of the Special Inspector General for Iraq Reconstruction, 2009), <http://www.sigir.mil/files/audits/09-023.pdf>, (accessed February 2, 2012).

³⁷ Tom Bowman, “No U.S. Troops, But an Army of Contractors In Iraq”, December 27, 2011, *linked from National Public Radio Home Page*, <http://www.npr.org/2011/12/27/144198497/no-u-s-troops-but-an-army-of-contractors-in-iraq>, (accessed December 30, 2011).

³⁸ Ibid., 2.

³⁹ Schwartz, *The Department of Defense’s Use of Private Security Contractors*, 2.

⁴⁰ COL (Ret) Christopher M. Mayer, “What the ICoC is Not”, January 1, 2011, *linked from PeaceOps.com, Journal of International Peace Operations Home Page*, <http://web.peaceops.com/archives/author/christophermayer>, (accessed January 20, 2012). In this journal entry, Mayer attempts to describe what the International Code of Conduct (ICoC) for Private Security Providers is and is not. He emphasizes that the ICoC is not an international law unto itself, but a measurable industry standard that states can use as a reference and source documents for laws governing the activities of PSCs. The ICoC also amplifies international law regarding the use of force, and restricts the PSCs signed onto the code to defensive operations in their use of force.

⁴¹ The Army Values are inculcated into the soldier starting from the first day of BCT they are Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage.

⁴² The Army Warrior Ethos: I will always place the mission first. I will never accept defeat. I will never quit. I will never leave a fallen comrade.

⁴³ Congressional Budgeting Office, *Contractors’ Support of U.S. Operations in Iraq*, (Washington, D.C.: Congressional Budgeting Office, 2008) 12. <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>, (accessed December 11, 2011).

⁴⁴ Ibid., The CBO uses the same security company Blackwater, and their contract with the U.S. State department in the 2008. The CBO model took into account additional items in the Blackwater contract to include vehicles, administrative support, and insurance, and then attempted to normalize these costs in the overall comparison with that of the U.S. Military costs. For the U.S. military element of the CBO cost comparison, they chose to use a Light Infantry type formation as the most likely candidate for the mission. The CBO also attempted to right size an Army unit that would be able to provide the same number of security personnel as the specific Blackwater contract used. The Blackwater contract provided a total of 189 security personnel with the requisite command and control, administrative and logistical support. The CBO determined it would need about one third of a U.S. Army Light Infantry battalion to perform the same mission outlined in the Blackwater contract. This detachment would include one

Infantry Company, and a portion of the Headquarters Company with slices of medics, scouts, snipers, and others to correspond to the Blackwater task organization.

⁴⁵ Ibid., 17. The CBOs method to estimate the rotational costs associated with maintaining both a force deployed and force(s) at home in the reset and preparation phases, the CBO analyzed two models or “cases”. Case 1 accounts for the costs of the actual home to deployed ratio at the time of the study or 1.2 units at home again in the areas of Military Personnel, Operations, and Equipment. The second case looks at these costs for the desired force ratio of 2:1. The results are illustrated in figure 1. Figure 1 outlines the CBO’s finding based on their modeling and warrants further analysis. The CBO first determined the costs of the deployed force that could provide the 189 guards that the Blackwater contract provided for, determining it to a total of \$55.4 million. In the next column, the model determines the cost of the 2008 rotational ratio of 1.2 units at home to 1 unit deployed and totals it with the deployed force for a total of \$88.2 million per year.

⁴⁶ “Special Agents”, *linked from U.S. Department of State homepage*, <http://www.state.gov/m/ds/career/c8853.htm>, (accessed March 9, 2012).

⁴⁷ U.S. Government Accounting Office, *Warfighter Support: A Cost Comparison of Using State Department Employees versus Contractors for Security Services in Iraq*, (Washington, D.C.: Government Accounting Office, 2010) 5-7, <http://www.gao.gov/assets/100/96571.pdf>, (accessed January 14, 2012).

⁴⁸ Ibid., 5-7. The author references the State Departments method of comparison. In order to compare dollar amounts from different time periods, the State Department converted the private security costs into fiscal year 2008 dollars. This comparison was conducted using three major assumptions: (1) the State Department would have to recruit, hire, and train new employees who would all be U.S. citizens; (2) the employees would serve one year in Iraq and then return (3) the State Department employees would use the same number of personnel as the contractors performing the security tasks. The comparison focused on major quantifiable cost components such as salary, benefits, overseas costs, training, recruitment, background screenings, and support.

⁴⁹ Cockayne, *Beyond Market Forces: Regulating*, 11.

⁵⁰ Ibid., 237.

⁵¹ Ibid., 241-243.

⁵² Ibid., 245.

⁵³ Ibid., 249.

⁵⁴ Ibid., 252.

⁵⁵ “The Montreux Document on private military and security companies”, *linked from the Swiss Federal Department of Foreign Affairs Home Page at “Topics”*, <http://www.eda.admin.ch/psc>, (accessed January 24, 2012).

⁵⁶ Ibid.

⁵⁷ “About the ICoC”, *linked from the International Code of Conduct for Private Security Companies Home Page* at “About the ICoC”, http://www.icoc-psp.org/About_ICoC.html, (accessed January 1, 2012).

⁵⁸ “The International Code of Conduct for Private Security Service Providers Signatory Companies”, December 1, 2011, *linked from the International Code of Conduct for Private Security Companies Home Page* at “Signatory Companies”, http://www.icoc-psp.org/uploads/Signatory_Companies_-_December_2011_-_Composite_List_SHORT_VERSION.pdf, (accessed January 1, 2012).

⁵⁹ “ICoC Steering Committee, International Code of Conduct (ICoC) for Private Security Providers”, *linked from the International Code of Conduct for Private Security Companies Home Page* at “About the ICoC”, http://www.icoc-psp.org/ICoC_Steering_Committee.html, (accessed January 24, 2012). The composition of the Temporary Steering Committee (TSC) members include: Representing Industry: Michael Clarke, G4S; Mark DeWitt, Triple Canopy; Estelle Meyer, Saracen International; Sylvia White, Aegis; Representing Civil Society: Chris Albin-Lackey, Human Rights Watch; Nils Melzer, Center for Business and Human Rights University of Zurich; Meg Roggensack, Human Rights First; Representing Governments: Josh Dorosin, US Department of State; David Dutton, Australian Department of Foreign Affairs and Trade; Ian Proud, UK Foreign Commonwealth Office; Convener / Facilitator: Swiss Government; DCAF.

⁶⁰ “International Code of Conduct (ICoC) for Private Security Providers, Draft Charter”, January 16, 2012, *linked from the International Code of Conduct for Private Security Companies Home Page* at “Draft Charter”, http://www.icoc-psp.org/uploads/Draft_Charter.pdf, (accessed January 24, 2012).

⁶¹ “Explanatory Note, Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Companies”, *linked from the International Code of Conduct for Private Security Companies Home Page* at “Explanatory Note”, http://www.icoc-psp.org/uploads/Explanatory_Note.pdf, (accessed January 24, 2012).

⁶² “International Code of Conduct (ICoC) for Private Security Providers, Draft Charter”.

⁶³ Mayer, “What the ICoC is Not”.

⁶⁴ Jason Ulkman, “Ex-Blackwater firm gets a name change, again”, December 12, 2011, *linked from the Washington Post Home Page*, at “National”, http://www.washingtonpost.com/blogs/checkpoint-washington/post/ex-blackwater-firm-gets-a-name-change-again/2011/12/12/gIQAXf4YpO_blog.html, (accessed January 1, 2012).

⁶⁵ Jennifer K. Elsea, *Private Security Contractors in Iraq and Afghanistan: Legal Issues*, (Washington D.C.: Congressional Research Service, 2010) 2. <http://www.fas.org/sgp/crs/natsec/R40991.pdf>, (accessed January 28, 2012).

⁶⁶ *Ibid.*, 5.

⁶⁷ “The Montreux Document on private military and security companies”.

⁶⁸ *Ibid.*

⁶⁹ Ibid. 14-19.

⁷⁰ John R. Luckey, Valerie Bailey Grasso, Kate M. M, *Inherently Governmental Functions and Department of Defense Operations: Background, Issues, and Options for Congress*, (Washington D.C.: Congressional Research Office, 2009) Summary, http://prhome.defense.gov/RSI/REQUIREMENTS/docs/CRS_DoDIGCA.pdf, (accessed January 28, 2012).

⁷¹ Elsea, *Private Security Contractors in Iraq and Afghanistan*, 15.

⁷² Ibid.

⁷³ *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009*, 181.

⁷⁴ Elsea, *Private Security Contractors in Iraq and Afghanistan*, 16.

⁷⁵ Ibid., 18-20.

⁷⁶ Ibid., 22.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Sigal P. Mandelker, Deputy Assistant Attorney General, Criminal Division, Department of Justice, Closing Legal Loopholes: Prosecuting Sexual Assaults and Other Violent Crimes Committed by American Civilians in a Combat Environment before the Committee on Foreign Relations, United States Senate, 110th Cong., 2nd sess., April 9, 2008, 5. <http://www.justice.gov/criminal/hrsp/pr/testimony/2008/04-09-08nelson-hearing.pdf>, (accessed January 30, 2012). Mandelker defines the difficulties in investigating and prosecuting in a combat environment: "It must be noted that even with the broadest scope of jurisdiction, however, investigating and prosecuting serious crimes in Iraq and Afghanistan are very challenging. As a general matter, investigations in any foreign country face particular difficulties of language, evidence collection, logistical support, and coordination with a sovereign power. In addition, the present circumstances in Iraq and Afghanistan raise further obstacles. Field investigation in an active war zone is extremely difficult and requires extensive security precautions. Witnesses are difficult to locate and when found are often reluctant to come to the United States to testify. In short, investigating and prosecuting serious crimes in a war zone is a very difficult and costly proposition, and the associated challenges cannot be underestimated. These logistical challenges help explain why investigations and prosecutions under MEJA may take significant time to complete."

⁸⁰ Elsea, *Private Security Contractors in Iraq and Afghanistan*, 25.

⁸¹ Ibid.

⁸² Ibid., 26.

⁸³ Ibid., 19.

⁸⁴ Ibid.

⁸⁵ Ibid., 20.

⁸⁶ Ibid., 12.

⁸⁷ Ibid.

⁸⁸ Ibid., 13-14.

⁸⁹ R. Chuck Mason, *Status of Forces Agreement (SOFA): What Is it, and How Has It Been Utilized?* (Washington D.C.: Congressional Research Service, 2011) 8. <http://www.fas.org/sgp/crs/natsec/RL34531.pdf>, (accessed January 30, 2012).

⁹⁰ Ibid.

⁹¹ Mandelker, *Closing Legal Loopholes: Prosecuting Sexual Assaults*, 5.

⁹² Schwartz, *The Department of Defense's Use of Private Security Contractors*, 2.

⁹³ *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009*, 181.

⁹⁴ United States Army War College, *Campaign Planning Handbook*, 77.

⁹⁵ Congressional Budgeting Office, *Contractors' Support of U.S. Operations*, 12.

⁹⁶ U.S. Government Accounting Office, *Warfighter Support: A Cost Comparison*, 5-7.

⁹⁷ Mayer, "What the ICoC is Not",

